

## ASSEMBLY BILL

**No. 1**

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**Introduced by Assembly Member Nava**

**(Coauthors: Assembly Members Ammiano, Brownley, Carter, Chesbro, Coto, Davis, Eng, Feuer, Fong, Krekorian, Ma, Monning, Ruskin, Salas, Skinner, Swanson, Torlakson, Torres, and Yamada)**

October 26, 2009

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An act to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1, as introduced, Nava. Taxation: Oil Industry Fair Share Act.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax on and after January 1, 2010, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at the rate of 10% of the gross value of each barrel of oil severed. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the board to deposit all revenues, less refunds, collected pursuant to these provisions into the General Fund.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Part 21 (commencing with Section 42001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. OIL INDUSTRY FAIR SHARE ACT

42001. This part shall be known and may be cited as the Oil Industry Fair Share Act.

42002. For purposes of this part, the following definitions shall apply:

(a) "Barrel of oil" means 42 United States gallons of 231 cubic inches per gallon computed at a temperature of 60 degrees Fahrenheit.

(b) "Board" means the State Board of Equalization.

(c) "Gross value" means the sale price at the mouth of the well in the case of oil, including any bonus, premium, or other thing of value paid for the oil. If there is no sale at the time of severance, "gross value" means the sale price when the oil is sold, including any bonus, premium, or other thing of value paid for the oil. If oil is exchanged for something other than cash, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the board shall determine the value of the oil subject to the tax

1 based on the cash price paid to producers for like quality oil in the  
2 vicinity of the well.

3 (d) "Oil" means petroleum, or other crude oil, condensate, casing  
4 head gasoline, or other mineral oil that is mined, produced, or  
5 withdrawn from below the surface of the soil or water in this state.

6 (e) "Producer" means any person that takes oil from the earth  
7 or water in this state in any manner; any person that owns, controls,  
8 manages, or leases any oil well in the earth or water of this state;  
9 any person that produces or extracts in any manner any oil by  
10 taking it from the earth or water in this state; any person that  
11 acquires the severed oil from a person exempt from property  
12 taxation under the United States Constitution or other laws of the  
13 United States or under the California Constitution or other laws  
14 of the State of California; and any person that owns an interest,  
15 including a royalty interest, in oil or its value, whether the oil is  
16 produced by the person owning the interest or by another on the  
17 person's behalf by lease, contract, or other arrangement.

18 (f) "Production" means the total gross amount of oil produced,  
19 including the gross amount attributable to a royalty or other  
20 interest.

21 (g) "Severed" or "severing" means the extraction or withdrawing  
22 from below the surface of the earth or water of any oil, regardless  
23 of whether the extraction or withdrawal shall be by natural flow,  
24 mechanical flow, forced flow, pumping, or any other means  
25 employed to get the oil from below the surface of the earth or  
26 water, and shall include the extraction or withdrawal by any means  
27 whatsoever of oil upon which the tax has not been paid, from any  
28 surface reservoir, natural or artificial, or from a water surface.

29 (h) "Stripper well" means a well that has been certified by the  
30 board as an oil well incapable of producing an average of more  
31 than 10 barrels of oil per day during the entire taxable month. Once  
32 a well has been certified as a stripper well, that stripper well shall  
33 remain certified as a stripper well until the well produces an  
34 average of more than 10 barrels of oil per day during an entire  
35 taxable month.

36 42003. On and after January 1, 2010, for the privilege of  
37 severing oil from the earth or water in this state for sale, transport,  
38 consumption, storage, profit, or use, a tax is hereby imposed upon  
39 all producers at the rate of 10 percent of the gross value of each

1 barrel of oil severed. The tax shall be applied equally to all portions  
2 of the gross value of each barrel of oil severed.

3 42004. Except as otherwise provided in this part, the tax shall  
4 be upon the entire production in this state, regardless of the place  
5 of sale or to whom sold or by whom used, or the fact that the  
6 delivery may be made to points outside the state.

7 42005. The tax imposed by this part shall be in addition to any  
8 ad valorem taxes imposed by the state or any of its political  
9 subdivisions, or any local business license taxes that may be  
10 incurred as a privilege of severing oil from the earth or water or  
11 doing business in that locality. There shall be no exemption from  
12 the payment of an ad valorem tax related to equipment, material,  
13 or property by reason of the payment of the gross severance tax  
14 pursuant to this part.

15 42006. The tax imposed by this part shall not be passed through  
16 to consumers by way of higher prices for oil, natural gas, gasoline,  
17 diesel, or other oil or gas consumable byproducts, such as propane  
18 and heating oil. The board may monitor and investigate any  
19 instance where producers or purchasers of the oil or gas have  
20 attempted to gouge consumers by using the tax as a pretext to  
21 materially raise the price of oil, natural gas, gasoline, diesel, or  
22 other oil or gas consumable byproducts, such as propane and  
23 heating oil.

24 42007. Two or more producers that are corporations and are  
25 owned or controlled directly or indirectly, as defined in Section  
26 25105, by the same interests shall be considered as a single  
27 producer for purposes of application of the tax prescribed in this  
28 part.

29 42008. (a) There shall be exempted from the imposition of  
30 the tax imposed pursuant to this part oil produced by a stripper  
31 well in which the average value of oil as of the first day of the  
32 previous calendar quarter is less than fifty dollars (\$50) per barrel.

33 (b) For oil produced in this state from a well that qualifies under  
34 Section 3251 of the Public Resources Code or which has been  
35 inactive for a period of at least the preceding five consecutive  
36 years, the imposition of the tax imposed pursuant to this part shall  
37 be reduced to zero for a period of 10 years.

38 (c) There shall be exempted from the imposition of the tax  
39 imposed pursuant to this part all oil owned or produced by the  
40 state and any political subdivision's (including any local public

1 entity (as defined by Section 900.4 of the Government Code))  
2 proprietary share of oil produced under any unit, cooperative, or  
3 other pooling agreement.

4 42009. The tax imposed by this part is due and payable to the  
5 board quarterly on or before the last day of the month next  
6 succeeding each calendar quarter.

7 42010. (a) Any producer that fails to pay any tax within the  
8 time required shall pay, in addition to the amount of tax owed,  
9 interest at the rate of 1 ½ percent per month, or fraction thereof,  
10 from the date on which the tax became due and payable to and  
11 including the date of payment.

12 (b) Every payment on a delinquent tax owed pursuant to this  
13 part shall be applied as follows:

14 (1) First, to any interest due on the tax.

15 (2) Second, to any penalty imposed by this part.

16 (3) Third, to the balance, if any, of the tax due.

17 42011. Each producer shall prepare and file with the board a  
18 return in the form prescribed by the board containing information  
19 as the board deems necessary or appropriate for the proper  
20 administration of this part. The return shall be filed on or before  
21 the last day of the calendar month following the calendar quarter  
22 to which it relates, together with a remittance payable to the board  
23 for the amount of tax due for that period.

24 42012. The board may prescribe those forms and reporting  
25 requirements as necessary to implement the tax, including, but not  
26 limited to, information regarding the location of the well by county,  
27 the gross amount of oil produced, the quantity sold and the selling  
28 price, the prevailing market price of oil, and the amount of tax  
29 due.

30 42013. The board shall administer and collect the tax imposed  
31 by this part pursuant to the Fee Collection Procedures Law (Part  
32 30 (commencing with Section 55001) of Division 2). For purposes  
33 of this part, the references in the Fee Collection Procedures Law  
34 to “fee” shall include the tax imposed by this part, and to  
35 “feepayer” shall include a person required to pay the tax imposed  
36 by this part.

37 42014. The board may prescribe, adopt, and enforce emergency  
38 regulations relating to the administration and enforcement of this  
39 part. Any emergency regulations prescribed, adopted, or enforced  
40 pursuant to this section shall be adopted in accordance with Chapter

1 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
2 Title 2 of the Government Code, and for purposes of that chapter,  
3 including Section 11349.6 of the Government Code, the adoption  
4 of these regulations is an emergency and shall be considered by  
5 the Office of Administrative Law as necessary for the immediate  
6 preservation of the public peace, health and safety, and general  
7 welfare. Notwithstanding Chapter 3.5 (commencing with Section  
8 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
9 including subdivision (e) of Section 11346.1 of the Government  
10 Code, any emergency regulations adopted pursuant to this section  
11 shall be filed with, but not be repealed by, the Office of  
12 Administrative Law, and shall remain in effect until revised by  
13 the board.

14 42015. The board shall deposit all taxes, penalties, and interest  
15 collected pursuant to this part, less refunds, in the General Fund.

16 42016. The provisions of this part are severable. If any  
17 provision of this part or its application is held invalid, that  
18 invalidity shall not affect other provisions or applications that can  
19 be given effect without the invalid provision or application.

20 SEC. 2. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.

29 SEC. 3. The Legislature finds and declares that this act  
30 addresses the purposes declared in the Governor's proclamation  
31 of September 29, 2009, regarding the state's tax system.

32 SEC. 4. This act provides for a tax levy within the meaning of  
33 Article IV of the Constitution and shall go into immediate effect.

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